



DEERING'S CALIFORNIA CODES ANNOTATED
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WELFARE AND INSTITUTIONS CODE
Division 9. Public Social Services
Part 3. Aid and Medical Assistance
Chapter 3. State Supplementary Program for Aged, Blind and Disabled
Article 7. In-Home Supportive Services

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Wel & Inst Code § 12300.4 (2015)

**§ 12300.4. (Operative date contingent) Direction of authorized
services to be provided within workweek**

(a) Notwithstanding any other law, including, but not limited to, Chapter 10 (commencing with *Section 3500*) of *Division 4 of Title 1 of the Government Code* and Title 23 (commencing with *Section 110000*) of *the Government Code*, a recipient who is authorized to receive in-home supportive services pursuant to this article, or Section 14132.95, 14132.952, or 14132.956, administered by the State Department of Social Services, or waiver personal care services pursuant to Section 14132.97, administered by the State Department of Health Care Services, or any combination of these services, shall direct these authorized services, and the authorized services shall be performed by a provider or providers within a workweek and in a manner that complies with the requirements of this section.

(b)

(1) A workweek is defined as beginning at 12:00 a.m. on Sunday and includes the next consecutive 168 hours, terminating at 11:59 p.m. the following Saturday.

(2) A provider of services specified in subdivision (a) shall not work a total number of hours within a workweek that exceeds 66, as

reduced by the net percentage defined by Sections 12301.02 and 12301.03, as applicable, and in accordance with subdivision (d). The total number of hours worked within a workweek by a provider is defined as the sum of the following:

(A) All hours worked providing authorized services specified in subdivision (a).

(B) Travel time as defined in subdivision (f), only if federal financial participation is not available to compensate for that travel time. If federal financial participation is available for travel time as defined in subdivision (f), the travel time shall not be included in the calculation of the total weekly hours worked within a workweek.

(3)

(A) If the authorized in-home supportive services of a recipient cannot be provided by a single provider as a result of the limitation specified in paragraph (2), it is the responsibility of the recipient to employ an additional provider or providers, as needed, to ensure his or her authorized services are provided within his or her total weekly authorized hours of services established pursuant to subdivision (b) of Section 12301.1.

(B)

(i) It is the intent of the Legislature that this section shall not result in reduced services authorized to recipients of waiver personal care services defined in subdivision (a).

(ii) The State Department of Health Care Services shall work with and assist recipients receiving services pursuant to the Nursing Facility/Acute Hospital Waiver who are at or near their individual cost cap, as that term is used in the waiver, to avoid a reduction in the recipient's services that may result because of increased overtime pay for providers. As part of this effort, the department shall consider allowing the recipient to exceed the individual cost cap, if appropriate. The department shall provide timely information to waiver recipients as to the steps that will be taken to implement this clause.

(4)

(A) A provider shall inform each of his or her recipients of the number of hours that the provider is available to work for that recipient, in accordance with this section.

(B) A recipient, his or her authorized representative, or any other entity, including any person or entity providing services pursuant to Section 14186.35, shall not authorize any provider to work hours that exceed the applicable limitation or limitations of this section.

(C) A recipient may authorize a provider to work hours in excess of the recipient's weekly authorized hours established pursuant to Section 12301.1 without notification of the county welfare department, in accordance with both of the following:

(i) The authorization does not result in more than 40 hours of authorized services per week being provided.

(ii) The authorization does not exceed the recipient's authorized hours of monthly services pursuant to paragraph (1) of subdivision (b) of Section 12301.1.

(5) For providers of in-home supportive services, the State Department of Social Services or a county may terminate the provider from providing services under the IHSS program if a provider continues to violate the limitations of this section on multiple occasions.

(c) Notwithstanding any other law, only federal law and regulations regarding overtime compensation apply to providers of services defined in subdivision (a).

(d) A provider of services defined in subdivision (a) is subject to all of the following, as applicable to his or her situation:

(1)

(A) A provider who works for one individual recipient of those services shall not work a total number of hours within a workweek that exceeds 66 hours, as reduced by the net percentage defined by Sections 12301.02 and 12301.03, as applicable. In no circumstance shall the provision of these services by that provider to the individual recipient exceed the total weekly hours of the services authorized to that recipient, except as additionally authorized pursuant to subparagraph (C) of paragraph (4) of subdivision (b). If multiple providers serve the same recipient, it shall continue to be the responsibility of that recipient or his or her authorized representative to schedule the work of his or her providers to ensure the authorized services of the recipient are provided in accordance with this section.

(B) When a recipient's weekly authorized hours are adjusted pursuant to subparagraph (C) of paragraph (1) of subdivision (b) of Section 12301.1 and exceed 66 hours, as reduced by the net percentage defined by Sections 12301.02 and 12301.03, as applicable, and at the time of adjustment the recipient currently receives all authorized hours of service from one provider, that provider shall be deemed authorized to work the recipient's county-approved adjusted hours for that week, but only if the additional hours of work, based on the adjustment, do not exceed the total number of hours worked that are compensable at an overtime pay rate that the provider would have been

authorized to work in that month if the weekly hours had not been adjusted.

(2) A provider of in-home supportive services described in subdivision (a) who serves multiple recipients is not authorized to, and shall not, work more than 66 total hours in a workweek, as reduced by the net percentage defined by Sections 12301.02 and 12301.03, as applicable, regardless of the number of recipients for whom the provider provides services authorized by subdivision (a). Providers are subject to the limits of each recipient's total authorized weekly hours of in-home supportive services described in subdivision (a), except as additionally authorized pursuant to subparagraph (C) of paragraph (4) of subdivision (b).

(e) Recipients and providers shall be informed of the limitations and requirements contained in this section, through notices at intervals and on forms as determined by the State Department of Social Services or the State Department of Health Care Services, as applicable, following consultation with stakeholders.

(f)

(1) A provider of services described in subdivision (a) shall not engage in travel time in excess of seven hours per week. For the purposes of this subdivision, "travel time" means time spent traveling directly from a location where authorized services specified in subdivision (a) are provided to one recipient, to another location where authorized services are to be provided to another recipient. A provider shall coordinate hours of work with his or her recipients to comply with this section.

(2) The hourly wage to compensate a provider for travel time described in this subdivision when the travel is between two counties shall be the hourly wage of the destination county.

(3) Travel time, and compensation for that travel time, between a recipient of authorized in-home supportive services specified in subdivision (a) and a recipient of authorized waiver personal care services specified in subdivision (a), shall be attributed to the program authorizing services for the recipient to whom the provider is traveling.

(4) Hours spent by a provider while engaged in travel time shall not be deducted from the authorized hours of service of any recipient of services specified in subdivision (a).

(5) The State Department of Social Services and the State Department of Health Care Services shall issue guidance and processes for travel time between recipients that will assist the provider and recipient to comply with this subdivision. Each county shall provide technical

assistance to providers and recipients, as necessary, to implement this subdivision.

(g) A provider of authorized in-home supportive services specified in subdivision (a) shall timely submit, deliver, or mail, verified by postmark or request for delivery, a signed payroll timesheet within two weeks after the end of each bimonthly payroll period. Notwithstanding any other law, a provider who submits an untimely payroll timesheet for providing authorized in-home supportive services specified in subdivision (a) shall be paid by the state within 30 days of the receipt of the signed payroll timesheet.

(h) This section does not apply to a contract entered into pursuant to Section 12302 or 12302.6 for authorized in-home supportive services. Contract rates negotiated pursuant to Section 12302 or 12302.6 shall be based on costs consistent with a 40-hour workweek.

(i) The state and counties are immune from any liability resulting from implementation of this section.

(j) Any action authorized under this section that is implemented in a program authorized pursuant to Section 14132.95, 14132.97, 14132.952, or 14132.956 shall be compliant with federal Medicaid requirements, as determined by the State Department of Health Care Services.

(k) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with *Section 11340*) of *Part 1 of Division 3 of Title 2 of the Government Code*), the State Department of Social Services and the State Department of Health Care Services may implement, interpret, or make specific this section by means of all-county letters or similar instructions, without taking any regulatory action.

(1)

(1) This section shall become operative only when the regulatory amendments made by RIN 1235-AA05 to Part 552 of Title 29 of the Code of Federal Regulations are deemed effective, either on the date specified in RIN 1235-AA05 or at a later date specified by the Federal Department of Labor, whichever is later.

(2) If the regulatory amendments described in paragraph (1) become only partially effective by the date specified in paragraph (1), this section shall become operative only for those persons for whom federal financial participation is available as of that date.

HISTORY:

Added Stats 2014 ch 29 § 76 (SB 855), effective June 20, 2014. Amended Stats 2014 ch 685 § 11 (SB 873), effective September 27, 2014.

NOTES:**Editor's Notes**

This section, as added Stats 2014 ch 29 § 76, effective June 20, 2014, until September 27, 2014, read:

"(a) Notwithstanding any other law, including, but not limited to, Chapter 10 (commencing with *Section 3500*) of *Division 4 of Title 1 of the Government Code* and Title 23 (commencing with *Section 110000*) of *the Government Code*, a recipient who is authorized to receive in-home supportive services pursuant to this article, or Section 14132.95, 14132.952, or 14132.956, administered by the State Department of Social Services, or waiver personal care services pursuant to Section 14132.97, administered by the State Department of Health Care Services, or any combination of these services, shall direct these authorized services, and the authorized services shall be performed by a provider or providers within a workweek and in a manner that complies with the requirements of this section.

"(b) (1) A workweek is defined as beginning at 12:00 a.m. on Sunday and includes the next consecutive 168 hours, terminating at 11:59 p.m. the following Saturday.

"(2) A provider of services specified in subdivision (a) shall not work a total number of hours within a workweek that exceeds 66, as reduced by the net percentage defined by Sections 12301.02 and 12301.03, as applicable, and in accordance with subdivision (d). The total number of hours worked within a workweek by a provider is defined as the sum of the following:

"(A) All hours worked providing authorized services specified in subdivision (a).

"(B) Travel time as defined in subdivision (f), only if federal financial participation is not available to compensate for that travel time. If federal financial participation is available for travel time as defined in subdivision (f), the travel time shall not be included in the calculation of the total weekly authorized hours of services.

"(3) (A) If the authorized in-home supportive services of a recipient cannot be provided by a single provider as a result of the limitation specified in paragraph (2), it is the responsibility of the recipient to employ an additional provider or providers, as needed, to ensure his or her authorized services are provided within his or her total weekly authorized hours of services established pursuant to subdivision (b) of Section 12301.1.

"(B) If the provider of authorized waiver personal care services cannot provide those services to a recipient as a result of the limitation specified in paragraph (2), the State Department of Health

Care Services shall work with the recipient to engage additional providers, as necessary. It is the intent of the Legislature that this section shall not result in reduced services authorized to recipients of waiver personal care services defined in subdivision (a).

"(4) (A) A provider shall inform each of his or her recipients of the number of hours that the provider is available to work for that recipient, in accordance with this section.

"(B) A recipient, his or her authorized representative, or any other entity, including any person or entity providing services pursuant to Section 14186.35, shall not authorize any provider to work hours that exceed the applicable limitation or limitations of this section.

"(C) A recipient may authorize a provider to work hours in excess of the recipient's weekly authorized hours established pursuant to Section 12301.1 without notification of the county welfare department, in accordance with both of the following:

"(i) The authorization does not result in more than 40 hours of authorized services per week being provided.

"(ii) The authorization does not exceed the recipient's authorized hours of monthly services pursuant to paragraph (1) of subdivision (b) of Section 12301.1.

"(5) For providers of in-home supportive services, the State Department of Social Services or a county may terminate the provider from providing services under the IHSS program if a provider continues to violate the limitations of this section on multiple occasions.

"(c) Notwithstanding any other law, only federal law and regulations regarding overtime compensation apply to providers of services defined in subdivision (a).

"(d) A provider of services defined in subdivision (a) is subject to all of the following, as applicable to his or her situation:

"(1) A provider who works for an individual recipient of those services shall not work a total number of hours within a workweek that exceeds 66 hours, as reduced by the net percentage defined by Sections 12301.02 and 12301.03, as applicable. In no circumstance shall the provision of these services by that provider to the individual recipient exceed the total weekly hours of the services authorized to that recipient, except as additionally authorized pursuant to subparagraph (C) of paragraph (4) of subdivision (b). If multiple providers serve the same recipient, it shall continue to be the responsibility of that recipient or his or her authorized representative to schedule the work of his or her providers to ensure the authorized services of the recipient are provided in accordance with this section.

"(2) A provider of in-home supportive services described in subdivision (a) who serves multiple recipients is not authorized to, and shall not, work more than 66 total hours in a workweek, as reduced by the net percentage defined by Sections 12301.02 and 12301.03, as applicable, regardless of the number of recipients for whom the provider provides services authorized by subdivision (a). Providers are subject to the limits of each recipient's total authorized weekly hours of in-home supportive services described in subdivision (a), except as additionally authorized pursuant to subparagraph (C) of paragraph (4) of subdivision (b).

"(e) Recipients and providers shall be informed of the limitations and requirements contained in this section, through notices at intervals and on forms as determined by the State Department of Social Services or the State Department of Health Care Services, as applicable, following consultation with stakeholders.

"(f)(1) A provider of services described in subdivision (a) shall not engage in travel time in excess of seven hours per week. For the purposes of this subdivision, "travel time" means time spent traveling directly from a location where authorized services specified in subdivision (a) are provided to one recipient, to another location where authorized services are to be provided to another recipient. A provider shall coordinate hours of work with his or her recipient or recipients to comply with this section.

"(2) The hourly wage to compensate a provider for travel time described in this subdivision when the travel is between two counties shall be the hourly wage of the destination county.

"(3) Travel time, and compensation for that travel time, between a recipient of authorized in-home supportive services specified in subdivision (a) and a recipient of authorized waiver personal care services specified in subdivision (a), shall be attributed to the program authorizing services for the recipient to whom the provider is traveling.

"(4) Hours spent by a provider while engaged in travel time shall not be deducted from the authorized hours of service of any recipient of services specified in subdivision (a).

"(5) The State Department of Social Services and the State Department of Health Care Services shall issue guidance and processes for travel time between recipients that will assist the provider and recipient to comply with this subdivision. Each county shall provide technical assistance to providers and recipients, as necessary, to implement this subdivision.

"(g) A provider of authorized in-home supportive services specified in subdivision (a) shall timely submit, deliver, or mail, verified by postmark or request for delivery, a signed payroll timesheet within

two weeks after the end of each bimonthly payroll period. Notwithstanding any other law, a provider who submits an untimely payroll timesheet for providing authorized in-home supportive services specified in subdivision (a) shall be paid by the state within 30 days of the receipt of the signed payroll timesheet.

"(h) This section does not apply to a contract entered into pursuant to Section 12302 or 12302.6 for authorized in-home supportive services. Contract rates negotiated pursuant to Section 12302 or 12302.6 shall be based on costs consistent with a 40-hour workweek.

"(i) The state and counties are immune from any liability resulting from implementation of this section.

"(j) Any action authorized under this section that is implemented in a program authorized pursuant to Section 14132.95, 14132.97, 14132.952, or 14132.956 shall be compliant with federal Medicaid requirements, as determined by the State Department of Health Care Services.

"(k) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with *Section 11340*) of *Part 1 of Division 3 of Title 2 of the Government Code*), the State Department of Social Services and the State Department of Health Care Services may implement, interpret, or make specific this section by means of all-county letters or similar instructions, without taking any regulatory action.

"(l) (1) This section shall become operative only when the regulatory amendments made by RIN 1235-AA05 to Part 552 of Title 29 of the Code of Federal Regulations are deemed effective, either on the date specified in RIN 1235-AA05 or at a later date specified by the Federal Department of Labor, whichever is later.

"(2) If the regulatory amendments described in paragraph (1) become only partially effective by the date specified in paragraph (1), this section shall become operative only for those persons for whom federal financial participation is available as of that date."

Amendments:

2014 Amendment:

(1) Substituted "hours worked within a workweek" for "authorized hours of services" in the second sentence of subd (b) (2) (B); (2) redesignated former subd (b) (3) (B) to be subd (b) (3) (B) (i); (3) deleted the former first sentence of subd (b) (3) (B) (i) which read: "If the

provider of authorized waiver personal care services cannot provide those services to a recipient as a result of the limitation specified in paragraph (2), the State Department of Health Care Services shall work with the recipient to engage additional providers, as necessary."; (4) added subd (b)(3)(B)(ii) and (d)(1)(B); (5) added subdivision designation (d)(1)(A); (6) substituted "one individual" for "an individual" in the first sentence of subd (d)(1)(A); and (7) deleted "recipient or" after "his or her" in the last sentence of subd (f)(1).

Hierarchy Notes:

Div. 9, Pt. 3, Ch. 3 Note

Div. 9, Pt. 3, Ch. 3, Art. 7 Note